IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAITLYN DONTONVILLE, et al.,	:	CIVIL ACTION
v.	:	
JEFFERSON HEALTH SYSTEM, et al.	:	NO. 01-4424

MEMORANDUM AND ORDER

HUTTON, J. January 14, 2002

Presently before the Court are Plaintiffs' Motion to Remand the Proceedings to State Court Pursuant to 28 U.S.C. § 1447(c) (Docket No. 3), Response of Defendants the Nemours Foundation, Shanmuga Jayakumar, M.D., J. Richard Bowen, M.D., Brian E. Hakala, M.D., and George Aguiar, M.D. to Plaintiffs' Motion to Remand (Docket No. 4), and Response of Defendants Jefferson Health Systems, Inc. and Jefferson University Physicians to Plaintiffs' Motion to Remand (Docket Nos. 5, 6). For the following reasons, Plaintiffs' Motion to Remand is GRANTED.

I. BACKGROUND

Caitlyn Dontonville and her parents ("Plaintiffs"), citizens of Pennsylvania, instituted the current medical malpractice action in the Court of Common Pleas of Philadelphia County on November 8, 2000. The action stems from injuries Caitlyn Dontonville allegedly sustained during surgery performed at Alfred I. DuPont Hospital for Children in Wilmington, Delaware. Plaintiffs named the Nemours

Foundation, Shanmuga Jayakumar, M.D., J. Richard Bowen, M.D., Brian E. Hakala, M.D., and George Aguiar, M.D. ("Removing Defendants" or "Defendants") as defendants to the medical malpractice action. None of these defendants share the same citizenship as Plaintiffs. In addition, Plaintiffs complaint set forth a cause of action for vicarious liability and corporate negligence against Jefferson Health Systems, Inc., Thomas Jefferson University, Thomas Jefferson University Hospitals, Inc., Jefferson Health Network, and Jefferson University Physicians (the "Jefferson entities").[1] The Jefferson entities named in the complaint are, like the Plaintiffs, citizens of Pennsylvania.

Three of the Pennsylvania Defendants, Jefferson Health Systems, Inc., Thomas Jefferson University Hospitals, Inc., and Jefferson Health Network, filed preliminary objections to Plaintiffs' complaint contending that Plaintiffs' corporate negligence claim was legally insufficient. The state court granted Plaintiffs leave to file an amended complaint, and Plaintiffs did so on March 1, 2001. Following the filing of the amended complaint, the same defendants renewed their preliminary

[1] In their complaint, Plaintiffs allege that the physicians who treated Caitlyn Dontonville "were part of the Jefferson Health System headquartered in Philadelphia." Pls.' Mot. Remand at 3. Defendants dispute this characterization, but concede that "Jefferson residents are taught and trained in pediatrics by the Nemours Foundation at the Alfred I. DuPont Hospital for Children" and certain Nemours physicians who participate in this educational program are named as faculty at Thomas Jefferson University Hospital. See Defs.' Resp. to Pls.' Mot. Remand at 2.

objections. However, the court overruled these objections on March 16, 2001.

On August 29, 2001, Defendants removed the case from the Court of Common Pleas to this Court. Plaintiffs now seek to have the action remanded to state court on the basis that diversity jurisdiction is lacking. Defendants contest this action and assert that the non-diverse Jefferson entities were fraudulently joined in order to thwart federal jurisdiction.

II. LEGAL STANDARD

A. Standard for Removal

An action may be removed from state court to federal court only if a federal district court would have original jurisdiction over the lawsuit. See 28 U.S.C. § 1441(a). Moreover, a defendant may not remove an action to federal court based on diversity if any defendant "is a citizen of the State in which such action is brought." 28 U.S.C. § 1441(b). "Section 1332 has been interpreted to require 'complete diversity.'" Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 580 n.2, 119 S.Ct. 1563, 1568 n.2 (1999). Thus, diversity jurisdiction "applies only to cases in which the citizenship of each plaintiff is diverse from the citizenship of each defendant." Caterpillar Inc. v. Lewis, 519 U.S. 61, 68, 117 S.Ct. 467, 472 (1996). Therefore, in the absence of a federal question, a complaint which joins a non-diverse defendant must fail

for lack of jurisdiction. See Batoff v. State Farm Ins. Co., 977 F.2d 848, 851 (3d Cir. 1992).

B. Fraudulent Joinder

"When a non-diverse party has been joined as a defendant, then in the absence of a substantial federal question the removing defendant may avoid remand only by demonstrating that the non-diverse party was fraudulently joined." Batoff v. State Farm Ins. Co., 977 F.2d 848, 851 (3d Cir. 1992); see also Schwartz v. Liberty Mut. Ins. Co., 2001 WL 1622209, at *2 (E.D. Pa. Dec. 18, 2001); Vogt v. Time Warner Entm't Co., Civ. A. No. 01-905, 2001 WL 360058, at * 2 (E.D. Pa. Apr. 4, 2001). The removing party who asserts that a defendant has been fraudulently joined carries a "heavy burden of persuasion." Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990), cert denied, 498 U.S. 1085 (1991); Steel Valley Auth. v. Union Switch & Signal Div., 809 F.2d 1006, 1012 n.6 (3d Cir. 1987), cert. dismissed, 484 U.S. 1021 (1988). "It is logical that it should have this burden, for removal statues 'are to be strictly construed against removal and all doubts should be resolved in favor of remand.'" Batoff, 977 F.2d at 851 (quoting Steel Valley, 809 F.2d at 1010).

The assessment of whether joinder is fraudulent requires a determination of whether the claims the plaintiff has maintained against the non-diverse defendant are "colorable." Batoff, 977 F.2d at 851-55; Boyer, 913 F.2d at 111. Joinder is fraudulent

"'where there is no reasonable basis in fact or colorable ground supporting the claim against . . . [defendants], or no real intention in good faith to prosecute the action against the defendants or seek a joint judgment.'" Batoff, 977 F.2d at 851 (quoting Boyer, 913 F.2d at 111). However, "[i]f there is even a possibility that a state court would find that the complaint states a cause of action against any one of the . . . defendants, the federal court must find that joinder was proper and remand the case to state court.'" Id. Additionally, "where there are colorable claims or defenses asserted against or by diverse and non-diverse defendants alike, the court may not find that the non-diverse parties were fraudulently joined based on its view of the merits of those claims or defenses." Id.

In evaluating a claim of fraudulent joinder, the court's focus is threefold. First, the court must concentrate on "the plaintiff's complaint at the time the petition for removal was filed." Batoff, 977 F.2d at 851. Second, the "'court must assume as true all factual allegations of the complaint.'" Id. Third, the court must resolve any uncertainties as to the current state of controlling substantive law in favor of the plaintiff. Id. at 851-52; see also Vogt, 2001 WL 360058, at *2. It should also be noted that "the threshold to withstand a motion to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure [dismissal for lack of jurisdiction], is thus lower than that required to

withstand a Rule 12(b)(6) motion." Id. at 852.

III. DISCUSSION

Since there is no federal question at issue in the instant case, the basis for federal jurisdiction rests solely on diversity. Therefore, because Plaintiffs are residents of Pennsylvania and because they filed this action in a Pennsylvania state court, the presence of a Pennsylvania defendant would prevent federal jurisdiction. It is uncontested that the Jefferson entities share the same Pennsylvania citizenship as Plaintiffs. Thus, in order to prevent remand back to state court, Defendants must show that the Jefferson entities, the non-diverse defendants, have been fraudulently joined.

Defendants allege that Plaintiffs make no viable claim against the Jefferson entities, and thus this Court should retain federal jurisdiction. According to Defendants, each Jefferson entity was fraudulently joined in order to "stymie removal by conjuring up non-viable claims against the Jefferson entities, even though the Pennsylvania defendants never met, much less treated, the minor plaintiff." Defs.' Resp. to Pls.' Mot. Remand at 2. Plaintiffs counter that, by overruling preliminary objections filed by three of the Jefferson entities, the state court has already determined that Plaintiff set forth a valid claim against the Pennsylvania Defendants. See Pls.' Mot. Remand at ¶ 3. This Court

agrees, and finds that Plaintiffs have stated colorable claims against the Jefferson entities.

A. Plaintiffs State a Colorable Claim

Plaintiffs' amended complaint set forth a cause of action for corporate negligence against the Jefferson entities. After Plaintiffs filed their amended complaint, three of the Jefferson entities renewed their preliminary objections to strike Count VII of the amended complaint and all allegations of corporate negligence. See Pls.' Mot. Remand, Ex. B (Defs.' Mot. to Strike Count VII of Pls.' Compl.). In their motion, the Jefferson entities argued that Plaintiffs failed to assert a sufficient factual basis to substantiate a claim for corporate negligence. Id. at ¶ 4. Specifically, the Jefferson entities asserted that under the case of Thompson v. Nason Hospital, 591 A.2d 703 (Pa. 1993), the Pennsylvania Supreme Court found that corporate negligence imposes a duty on a hospital to provide for a patients safety and well being while the person is a patient in the hospital. See Defs.' Mot. to Strike Count VII of Pls.' Compl. at ¶ 5. "Clearly, plaintiffs' claims are legally insufficient to establish a basis for corporate negligence . . as no care was rendered by defendant hospital to minor-plaintiff." Id. at ¶ 6. The state court, however, disagreed with Defendants and overruled the objections.

Defendants reiterate these same arguments in the instant motion to remand, and contend that Plaintiffs are unable to set forth a prima facie case of corporate negligence since the minor plaintiff was not treated by the Jefferson entities. See Defs.' Resp. to Pls.' Mot. Remand at 11. The state court clearly disagreed with this assertion. Corporate negligence is an evolving doctrine under Pennsylvania law. The theory "is based upon the systemic or institutional negligence of the hospital itself rather than the conduct of individual employees or physicians." Oven v. Pascucci, 46 Pa. D. & C. 4th 506, 512 (Pa. Com. Pl. 2000) (citing Thompson v. Nason Hosp., 591 A.2d 703 (Pa. 1991)). As such, liability is not dependent upon the malpractice of a third party such as a physician or nurse. Welsh v. Bulger, 698 A.2d 581, 585 (Pa. 1997); Moser v. Heistand, 681 A.2d 1322, 1325 (Pa. 1996); Oven, 46 Pa. D. & C. 4th at 513.

While the Supreme Court of Pennsylvania has not yet addressed the extension of corporate liability to health care facilities and providers other than hospitals, "several trial courts have considered the viability of a systemic negligence claim against various types of health care organizations and providers." Oven, 46 Pa. D. & C. 4th at 514 (extending corporate negligence to a professional corporation) (citations omitted). Indeed, rather than restrict the doctrine's application, "the Superior Court of Pennsylvania has expanded the principle of corporate negligence to

health care entities other than hospitals." Id. at 517. Moreover, "the federal district court in Fox v. Horn, 2000 WL 49374 (E.D. Pa. 2000), expanded [corporate negligence] liability to a medical professional corporation." Id. at 519. Therefore, Plaintiffs' joinder of the Pennsylvania Defendants was not wholly insubstantial or frivolous, as Defendants contend, because the Jefferson entities were not the treating hospital.

Under Pennsylvania law, preliminary objections should only be sustained in cases that are "free and clear from doubt." See Bower v. Bower, 611 A.2d 181, 182 (Pa. 1992). Therefore, "a court must overrule objections in the nature of a demurrer if the complaint pleads sufficient facts which, if believed, would entitle the petitioner to relief under any theory of law." Wilkinsburg Police Officers Assoc. v. Commw. of Pennsylvania, 636 A.2d 134, 137 (Pa. 1993). By overruling the Defendants' preliminary objections, the state court concluded that Plaintiffs plead sufficient facts to sustain a claim for corporate negligence. Therefore, it is clear that there is more than a mere possibility that a state court would find that the complaint states a cause of action against the Jefferson entities for corporate negligence. See e.g., Lamb v. Lederle Lab., Civ. A. No. 94-4879, 1994 WL 551536 (E.D. Pa. Oct. 7, 1994) (finding that plaintiffs breach of warranty theory of liability against the City of Philadelphia was not frivolous or insubstantial because "the state court found it sufficient to

withstand the City's Preliminary Objections").

It is not the province of this Court to engage in a deeper analysis of the documents or facts so that this Court would essentially be conducting a 12(b)(6) analysis. See Batoff, 977 F.2d at 852. Instead, this Court's role is to examine the complaint and the facts of this matter and determine whether they could support a conclusion that the claims against the defendants were not even colorable, that is, were wholly insubstantial and frivolous. See id. As discussed above, this Court finds that Plaintiffs' claims are not wholly insubstantial and frivolous. Rather, the claim of corporate negligence withstood the court's review of preliminary objections. Therefore, this Court concludes that Defendants have failed to overcome their heavy burden of persuasion that Plaintiffs joinder of the Jefferson entities was fraudulent. As such, Defendants have not established the existence of complete diversity of citizenship between all the plaintiffs and all the defendants in this matter. Consequently, this Court grants Plaintiffs' request to remand this case back to the state court.

An appropriate Order follows.

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O R D E R

AND NOW, this 14th day of January, 2002, upon consideration of Plaintiffs' Motion to Remand the Proceedings to State Court Pursuant to 28 U.S.C. § 1447(c) (Docket No. 3), Response of Defendants the Nemours Foundation, Shanmuga Jayakumar, M.D., J. Richard Bowen, M.D., Brian E. Hakala, M.D., and George Aguiar, M.D. to Plaintiffs' Motion to Remand (Docket No. 4), and Defendants Jefferson Health Systems, Inc. and Jefferson University Physicians' Response to Plaintiffs' Motion to Remand (Docket Nos. 5, 6), IT IS HEREBY ORDERED that Plaintiffs' Motion to Remand is **GRANTED.**

IT IS FURTHER ORDERED that this case is **REMANDED** back to the Court of Common Pleas of Philadelphia County.

BY THE COURT:

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HERBERT J. HUTTON, J.